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IN THE

Supreme Court of the United States

October Term, 1982

BERLIN L. LAWSON,
Petitioner,

v.

BURLINGTON INDUSTRIES, INC.,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether there should have been an equitable tolling of the 180 day EEOC charge filing requirement in an Age Discrimination lawsuit where the Plaintiff was paid a 6 month severance pay when he was laid off, he was told he had 270 day reinstatement rights, and, he was informed at the time he was offered another position by his Defendant employer some 90 days after his layoff that he would still be considered for other openings?

2. Whether a Plaintiff is not allowed to claim any additional acts of discrimination under the Age Discrimination in Employment Act other than those appearing on the face of an EEOC charge form?

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v.

BURLINGTON INDUSTRIES, INC.,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The Petitioner Berlin L. Lawson prays that a writ of certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Fourth Circuit entered in this proceeding on July 22, 1982.

OPINIONS BELOW

The opinion of the Fourth Circuit, entered on July 22, 1982, is not yet reported and is reprinted in Appendix A hereto, infra, pages App. 1 - 12.

The opinion of the United States District Court for the Middle District of North Carolina, entered on November 24, 1981, is unreported and is reprinted in Appendix B hereto, infra, pages App. 13 - 17.

JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit was entered on July 22, 1982 (Appendix A, infra, pages App. 1-12), and, this Petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. § 1254 (1).

STATUTORY PROVISIONS INVOLVED

Section 7(d) of the Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 626(d), as amended by Pub. L. 95-256, § 4(a),(b)(1),(c)(1), April 6, 1978, 92 Stat. 190, 191, provides currently in pertinent part:

> (d) No civil action may be commenced by any individual under this section until 60 days after a charge alleging unlawful discrimination has been filed with the [Equal Employment Opportunity Commission, administratively handling charges for the Secretary of Labor]. Such a charge shall be filed--
>
> > (1) within 180 days after the alleged unlawful practice occurred;
> > . . . .
>
> Upon receiving such a charge, the [EEOC] shall promptly notify all persons named in such charge as prospective defendants in the action. . . .

Prior to its amendment in 1978 by Congress, the relevant portion of Section 7(d) of the ADEA, 29 U.S.C. § 626(d), Pub. L. 90-202, § 7, December 15, 1967, 81 Stat. 604, provided:

> (d) No civil action may be commenced by any individual under this section until the individual has given the [Secretary of Labor] not less than sixty days' notice of an intent to file such action. Such notice shall be filed--
>
> > (1) within one hundred and eighty days after the alleged unlawful practice occurred, ...
>
> Upon receiving a notice of intent to sue, the [Secretary of Labor] shall promptly notify all persons named therein as prospective defendants in the action. . . .

STATEMENT OF THE CASE

This is a civil action brought by the Plaintiff, Berlin L. Lawson

(hereinafter Lawson), against the Defendant, Burlington Industries, Inc., (hereinafter Burlington) under the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 et seq. (hereinafter ADEA) in the United States District Court for the Middle District of North Carolina.

The facts are largely undisputed by the parties to the lawsuit and consisted of the pleadings and discovery materials since the District Court granted a Motion to Dismiss by the Defendant, Burlington.

Mr. Lawson worked for Burlington from ten days after leaving the U.S. Air Force in 1959 until his layoff by Burlington in 1979. On April 1, 1979, there was a group meeting of the

employees where Mr. Lawson worked, the Asheboro, N.C. Klopman Mills trucking facility (Klopman Mills is a division of Burlington). It was announced at this meeting that the Asheboro facility would be closed and:

> The employees were informed that the company would attempt to place as many people as possible at other locations. The employees were also informed that any employee who was not placed and was terminated because of the closing of this facility would have his or her benefits and company service restored if they were subsequently rehired by Burlington within 270 days of their termination. No promise was made to place all employees. It was emphasized that, while the company would attempt to find positions for these employees, the company could not guarantee that suitable positions could be located for each employee. (Burlington's Discovery Admission response; Emphasis added).

Mr. Lawson was also informed from other sources about his ability to be recalled for 270 days.

On or about June 29, 1979, Mr. Lawson had a conversation with Burlington's Division Personnel Manager Barnes at which time Mr. Lawson inquired why a Daniel Richardson was being transferred elsewhere with the company and Mr. Lawson was being laid off. Mr. Lawson was 45 at the time (date of birth, October 27, 1933) and Mr. Richardson was 38. This allegation of prima facie ADEA discrimination (discrimination against an employee over 40 in favor of an employee under 40) was alleged in the subsequent Complaint filed in District Court.

When Mr. Lawson left employment

at Burlington (his last day of work being June 30, 1979), he was given severance pay through December, 1979.

On or about October 1, 1979, Mr. Lawson was offered a clerical job at another location by Burlington. Mr. Lawson refused the job because the pay was "much, much less than what I was making", and, asked to see Personnel Manager Barnes. Barnes said:

> "I'm sorry--" but said "that's the best we can do." And he said, "Maybe we'll come up with something else." He said, "If we do, we'll be in touch". And I-we shook hands, and I left. (Deposition of Lawson, Emphasis added)

Subsequently, in January, 1980, being unsure of whether to go the Equal Employment Opportunity Commission (EEOC) or the Labor Board, Mr. Lawson made his

first attempts to file his required charges. On January 17, 1980, he filled out an Intake Questionnaire for EEOC (the governmental agency now handling ADEA cases), and, subsequently on February 5, 1980, filled out an EEOC Charge form. Burlington was subsequently served with a copy of this charge by EEOC.

Mr. Lawson was asked, in his deposition by Burlington's attorney why he had not considered filing an EEOC charge against Burlington earlier and he responded:

> A. Well, I considered it, but I always ran the--through my mind that I was going to be recalled. And I tried to check with friends of mine about openings that might come up, and I'd be sure that I--I was just certain that I would be called. And so

I did push it around in my mind, a lot of times whether to or whether not to, and, then I finally just said, well, yes, I'm going to because I have given them a lot of time, a lot of my life . . . .

Q. You were just waiting to see if the company would recall you?

A. That was the main thing because I could just not see them--after being--having the relationship with them for twenty years that I had had, and from what I had been told . . . .

. . . .

Q. You felt that left a vacancy that you should have been offered?

A. That left a vacancy, and the--I felt that was--you know, they kept talking about two hundred and seventy days, and, I'm sure I was still on the records over there somewhere, and, I knew that I would have--had had

more experience than
someone they could hire
off the street, but I
never got any call,
except for the clerical
position we just spoke of.

Mr. Lawson alleged in the EEOC charge he filed on February 5, 1980, that was written for him by an EEOC employee, that he was discriminated against by Burlington in the younger Richardson remaining an employee and Mr. Lawson being laid off on or about June 30, 1979. In the Complaint filed in U.S. District Court, in addition to allegations of discrimination because of the Richardson incident, Mr. Lawson alleged allegations of not being called within the 270 day period to openings that occurred because of his age and complaints about the Richardson discrimination, and, specifically that the

October, 1979, offer by the employer was discriminatory.

The Defendant, Burlington, moved to dismiss the Complaint because Mr. Lawson had not filed his EEOC charge within 180 days as required by Section 7(d) of the ADEA, 29 U.S.C. § 626(d), and, that the Complaint was impermissibly broad since it contained allegations not in the EEOC charge. Burlington had its Motion to Dismiss the Complaint granted by the U.S. District Court for the Middle District of North Carolina because that Court felt that equitable tolling of the 180 charge filing requirement under the ADEA was not proper under the circumstances of this case, the charge in fact had not been filed within 180 days, and, that no charge was filed alleging the

other acts of discrimination alleged in the Complaint. App. B infra. The U.S. Court of Appeals for the Fourth Circuit affirmed in its decision dated July 22, 1982. App. A infra.

REASONS FOR GRANTING THE WRIT

The Petitioner respectfully submits that (1) The decision of the Court of Appeals for the Fourth Circuit in this case as to the equitable tolling of the statute of limitations in the filing of an EEOC charge in an ADEA case is in conflict with an applicable decision by the Third Circuit; (2) The decision of the Court of Appeals for the Fourth Circuit is an important question of federal law which has not been, but should be settled by this Court because the said Court of Appeals decision

is in conflict with a Congressional mandate and the legislative history of the recent 1978 ADEA amendments wherein it was stated that the EEOC "charge requirement is not a jurisdictional prerequisite" and there is "equitable modification" available for a failure to meet the charge filing requirement; (3) The decision of the Court of Appeals for the Fourth Circuit as to limiting allegations of discrimination in a subsequent lawsuit to those specifically raised in the wording of an EEOC charge is an important question of federal law which has not been, but should be, settled by the United States Supreme Court given the importance to every individual filing any charge of discrimination and in light of prior decisions by other

courts relaxing like or related or continuing violations of employment discrimination, but, more especially, given the Congressional mandate and legislative history at least implicit to the 1978 ADEA amendments regarding a more liberalizing wording in charge filing; and, (4) The decision by the Court of Appeals regarding equitable tolling for the filing of EEOC charges and the wording of charges of employment discrimination has decided a federal question in a way in conflict with applicable decisions of this Court and other courts in similar cases, and, has, through the denial of jurisdiction to District Courts of this and similar cases, departed from the accepted and usual course of judicial proceedings

and so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

1. THE DECISION OF THE COURT OF APPEALS FOR THE FOURTH CIRCUIT AS TO EQUITABLE TOLLING OF THE EEOC CHARGE FILING TIME IN AN ADEA CASE IS IN CONFLICT WITH A DECISION OF THE THIRD CIRCUIT.

The undersigned attorney for the Petitioner cited in his brief and spent a great deal of time in arguing at oral argument before the U.S. Court of Appeals for the Fourth Circuit the similarities of the instant case of Mr. Lawson and the Third Circuit opinion of Bonham v. Dresser Industries, Inc., 569 F.2d 187 (3rd Cir. 1977) cert. denied 439 U.S. 821, 99 S.Ct. 87, 58 L.Ed.2d 113 (1978). The reasons for the citation to the

Bonham case was the striking similarity of facts in that case and Mr. Lawson's, and, the fact that Bonham had been cited by Congress when it considered the 1978 amendments to the Age Discrimination in Employment Act.

In Bonham, summary judgment was granted the defendant employer by the U.S. District Court for the Western District of Pennsylvania because the plaintiff, Mr. Bonham, had not filed his charge within the 180 day period given by the ADEA. Bonham was terminated on October 31, 1975, and, performed no services thereafter. Subsequently, on January 19, 1976, Bonham was advised by the Corporate defendant's President that there were "arrangements to review other opportunities for Bonham within the

company." 569 F.2d at 190. Thereafter, on February 18, 1976, Bonham "was notified that there would be no position for him within Dresser Industries." Id. at 190-91. On June 16, 1976, 226 days after the October 31 termination and 113 days after Dresser said no more work, Bonham filed his charge (then filing consisted of giving an "intent to sue" to an agent of the U.S. Department of Labor). The Bonham court agreed with the Tenth Circuit's decision in Dartt v. Shell Oil Co., 539 F.2d 1256 (10th Cir. 1976), aff'd per curiam by an equally divided court, 434 U.S. 99, 98 S.Ct. 600, 54 L.Ed.2d 472 (1977), that equitable modification for filing the charge of discrimination was available and said:

> Because we construe the 180-day requirement to be in the nature of a statute of limitations, we conclude that the granting of summary judgment was improper. The affidavits before the district court on Dresser's motion state facts which give rise to a disputed issue of tolling or estoppel. Plaintiff's post-termination reaction was an attempt to secure alternative employment with the company. The letter he received in January from the company's president was optimistic in this regard. The limitations period may have been tolled while Bonham was actively pursuing his employment situation and while the company was sending positive signals. 569 F.2d at 193.

Further, the legislative history of the 1978 amendments of the ADEA specifically shows that the Bonham case was approved as an example of equitable tolling of the 180 day charge filing period:

> The conferees agree that the "charge" requirement is not

> a jurisdictional prerequisite to maintaining an action under the ADEA and that therefore equitable modification for failing to file within the time period will be available to plaintiffs under this Act. See e.g., Dartt v. Shell Oil Co., 539 F.2d 1256 (10th Cir. 1976) affirmed by an evenly divided court, 98 S.Ct. 600 (1977); Bonham v. Dresser Industries, Inc. [569 F.2d 187] 16 FEP Cases 510 (3d Cir. 1977); Charlier v. S.C. Johnson & Son, Inc., 556 F.2d 761 (5th Cir. 1977). H. Conf. Rep. No. 950, 95th Cong., reprinted in 1978 U.S. Code Cong. & Admin. News 528, 534, Legis. Hist. of 1978 Amendments to ADEA.

Lawson, in the instant case, was not only told he had 270 days as a possible reinstatement period, but, he was in fact called in after 90 days and offered another job, and, even told then that he still might be considered for other openings as they came up. Neither the U.S. District Court for the Middle Dis-

trict of North Carolina nor the Fourth Circuit Court of Appeals distinguished or even cited the Bonham case in their decisions summarily dismissing Mr. Lawson's Complaint. App. A,B, infra. This is not because the Bonham case was not relevant, but, because these Courts chose to ignore it and hold contrary to the Bonham decision without distinguishing it because that case cannot be distinguished. To be fair, the Fourth Circuit did cite a case, App. A at App. 11, Wagner v. Sperry Univac, 458 F.Supp. 505 (E.D.Pa. 1978), Aff'd mem. 624 F.2d 1092 (3d Cir. 1980), that distinguished the facts of that case from Bonham and did not give equitable tolling to a plaintiff filing an EEOC charge outside the 180 day period. However, the

Fourth Circuit cited Wagner without comment and the Third Circuit did not publish an opinion in that case. Bonham was not directly cited by the Fourth Circuit in Mr. Lawson's instant case because Bonham cannot be distinguished from the instant case before this Court. Therefore, the Petitioner, Lawson, prays this Court to note that a possible conflict between Circuits as to the law could be averted through this Court granting certiorari to the Petitioner.

2. THE DECISION OF THE FOURTH CIRCUIT AS TO EQUITABLE TOLLING OF FILING AN EEOC CHARGE IN AN ADEA CASE IS A SIGNIFICANT, IMPORTANT AND RECURRING QUESTION OF FEDERAL LAW THAT SHOULD BE REVIEWED BY THIS COURT.

The Petitioner was paid severance pay for six months after he was laid off

by his employer, Burlington. There is currently a conflict of opinions as to whether or not such a payment alone should extend the EEOC charge filing time in ADEA cases. E.g., Moses v. Falstaff Brewing Corp. 525 F.2d 92 (8th Cir. 1975) (180 day period extended); Naton v. Bank of California, 649 F.2d 691 (9th Cir. 1981) (limitations period not extended by separation pay). The Petitioner has contended that severance pay alone should be considered grounds for the extension of the 180 day period, but, if not just a sole factor, certainly severance pay should be considered with other equitable factors in whether to toll a statute of limitations. The true reason for seeking this Court's guidance, however, arises in reconciling cases to

the fact that some courts appear to have difficulties, even after 1978 amendments to the ADEA, in allowing equitable considerations to be considered when talking about the EEOC charge filing period. For example, in the Naton case decided in '81, a case cited by the Fourth Circuit in the instant case, App. A at App.11, that Court went to considerable discussion before deciding that equitable modification of the limitations period was possible. 649 F.2d at 695-96. While the 1978 Congressional amendments to ADEA have emphasized equitable tolling of the EEOC charge filing requirement, it appears that this legislative history is seldom, if ever, discussed by the Courts, and, therefore, this Court should intervene in this important and

significant issue. Congress stated clearly its concern as to this issue when it found "Failure to timely file [an EEOC charge] as required by section 7(d) has been the most common basis for dismissal of ADEA lawsuits by private individuals." S. Rep. 493, 95th Cong. reprinted in 1978 U.S. Code Cong. & Admin. News 504, 515, Legis. Hist. of 1978 Amendments to ADEA. Congress stated, in the Conference agreement on the changing of the wording of 7(d) to permit a "charge" to be filed rather than an "intent to sue" that "the 'charge' requirement is not a jurisdictional prerequisite to maintaining an action under the ADEA and that therefore equitable modification for failing to file within the time period will be available to plaintiffs under this Act",

and gave the Dartt v. Shell Oil Co. case, inter alia, as an example of equitable modification. H. Conf. Rep. No. 950, 95th Cong., reprinted in 1978 U.S. Code Cong. & Admin. News 528, 534, Legis. Hist. of 1978 Amendments to ADEA. The Dartt case was affirmed per curiam by an equally divided U.S. Supreme Court without an opinion by this Court. Dartt v. Shell Oil Co., 539 F.2d 1256, (10th Cir. 1976) affirmed by an evenly divided Court, 434 U.S. 99, 98 S.Ct. 600, 54 L.Ed.2d 270 (1978). Had this Court issued a decision in Dartt (which involved delay in filing because Mrs. Dartt was not told to do so by an administrative agent investigating her case) then perhaps guidelines as to equitable tolling or estoppel would have been available in Mr. Lawson's case.

Further, had this Court granted certiorari in the Bonham case, supra, a case very similar to the instant case now before this Court, wherein the Third Circuit allowed equitable tolling of the charge filing requirement, then the Fourth Circuit may have very well ruled differently in the instant case. In any case, this Court now has before it a fairly common case (if the legislative pronouncement is to be believed concerning dismissals because of the 180 day filing requirement and given the wealth of cases on this subject). Since some confusion still exists in this area even since the recent legislative amendments to the ADEA, it is felt that this Court can and should address this substantial and important question of federal law.

3. THE DECISION OF THE FOURTH CIRCUIT AS TO ALLEGATIONS IN A COMPLAINT FILED IN A ADEA LAWSUIT BEING LIMITED TO THE WORDING OF AN EEOC CHARGE FORM IS A SIGNIFICANT, IMPORTANT AND RECURRING QUESTION OF FEDERAL LAW THAT SHOULD BE REVIEWED BY THIS COURT.

The Fourth Circuit's decision cites no case law for its holding that "Illegal layoff--the charge which appeared in the EEOC notice--does not encompass an allegation of illegal failure to rehire." App. A infra at App. 8. Under the pre-1978 version of Section 7(d), a potential ADEA plaintiff was required to file a "notice of intent to sue". Such a broadly worded requirement even raised an issue of whether such "notice" had to even be in writing. See, e.g., Woodford v. Kinney Shoe Corp., 369 F.Supp. 911

(N.D.Ga. 1973) (notice need not be in a writing, a telephone call was sufficient, and notice need not expressly declare the intent to file an action); Hays v. Republic Steel Corp., 531 F.2d 1307 (5th Cir. 1976) (written notice filing required). Then, in the pre-1978 ADEA days, there was also a conflict as to what, if anything, the written "notice", if one was given, should require. See, e.g., Powell v. Southwestern Bell Telephone Co., 494 F.2d 485 (5th Cir. 1974) (a letter asking the Secretary of Labor to sue on behalf of an alleged ADEA discriminatee "does not equate with notice of such an individual's personal intent to commence a private lawsuit"). But, see, Franci v. Avco Corp., 460 F.Supp. 389, 392-94

(D. Conn. 1978) (stating that between Circuits and even within Districts there were disagreements on the "notice" requirement, and, holding "To require slavish compliance with the notice requirements of § 626(d) would be to create a procedural pitfall which not only would frustrate the remedial objectives of ADEA, but also would do little to bolster the layman's respect for the law and the legal profession"). To state that the issue of jurisdictional filing within 180 days created a wealth of case law, much of it inconsistent, among the various federal courts, is to make an understatement. See generally, Annot., Construction and Application of Age Discrimination in Employment Act, 24 ALR Fed. 808, 827-832 at § 3(a)

(Supp. 1981). The clear intention of Congress in the legislative history of the 1978 amendments to the ADEA that the new "charge" requirement in replacing the "notice of intent to sue" was to liberalize and make easier the 180 day filing requirement by potential ADEA litigants. Scaramuzzo v. Glenmore Distilleries Co., 501 F.Supp. 727, 730-31 (N.D. Ill. 1980). Congress implicitly understood the function of an EEOC charge when it stated that: "This change in language [from 'notice of intent to sue' to filing a 'charge'] is not intended to alter the basic purpose of the notice requirement, which is to provide the [Department of Labor; now the EEOC] with sufficient information so that it may notify prospective defendants and to

provide the [Secretary of Labor, now the EEOC] with an opportunity to eliminate the alleged unlawful practices through informal methods of conciliation." 1978 U.S. Code Cong. & Admin. News at 534, supra. The Defendant, Burlington, was notified by the EEOC of Mr. Lawson's charge filing in this case, but, perhaps the real difficulty comes from the fact that if the Fourth Circuit's decision stands in this case, it is not just "notice" that will be required but intimate knowledge of each and every possible allegation that a potential plaintiff, such as Mr. Lawson, must allege in his ADEA Complaint. The importance of this issue reaches beyond just the instant case, and, therefore, the Petitioner respectfully requests

that certiorari be granted to decide this important and recurring problem.

4. THE DECISION OF THE FOURTH CIRCUIT HAS DECIDED AN ISSUE IN A WAY IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT, AND, THROUGH THE DENIAL OF JURISDICTION IN THIS AND SIMILAR CASES, HAS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS, AND SO FAR SANCTIONED SUCH A DEPARTURE BY A LOWER COURT, AS TO CALL FOR AN EXERCISE OF THIS COURT'S POWER OF SUPERVISION.

To say that this particular case may impact harshly upon one individual Plaintiff, Mr. Lawson, would not say much towards why this Court should grant certiorari in this case. However, Congress has noted that the 180 day charge (or its predecessor "notice of intent to sue") requirement was "the most common basis for dismissal of

ADEA lawsuits." 1978 U.S. Code Cong. & Admin. News at 515, supra. The importance of a ruling by this Court should be self-evident as to what standards should be uniformly applied throughout the Federal Court System in whether or not ADEA lawsuits are to be allowed in the first place (whether the 180 day EEOC charge filing jurisdictional requirement has been fulfilled). Hence, perhaps the threshold jurisdictional question and the need for uniformity throughout the Federal System has been the reason why this Court has granted certiorari in other employment cases recently involving other employment laws such as Title VII, 42 U.S.C. §§ 2000e et seq., and 42 U.S.C. § 1983. Delaware State College v. Ricks, 449 U.S. 250, 101 S.Ct. 498, 66

L.Ed.2d 431 (1980); Chardon v. Fernandez, __U.S. ___, 102 S.Ct. 28, 70 L.Ed.2d 6 (1981). More recently, in a case cited by the Fourth Circuit in its opinion in the instant case, App. A at App. 9, infra, this Court decided Zipes v. Trans World Airlines, Inc., ___U.S. ___, 102 S.Ct. 1127, 71 L.Ed.2d 234 (1982), which held that filing a timely charge of discrimination in a Title VII case with the EEOC is not a jurisdictional prerequisite to suit in federal court but is subject to waiver, estoppel, and equitable tolling. This Court, in Zipes, at footnote 11, noted the similarities between employment cases under the National Labor Relations Act (NLRA), as amended, 29 U.S.C. §§ 151 et seq., and, especially noted the

"equitable modification" available to Plaintiffs under the 1978 Amendments to the ADEA. The importance of the instant case, just for the other issue in this case, the contents of the EEOC Charge form itself, and using an NLRA case as an example as in Zipes, is that the question of a variance from language in a charge form is but a procedural ploy to oust a Federal Court of jurisdiction and not to address the merits, is to ignore the function of such charges to just attempt an administrative resolution of matters before more formal and complete litigation over all matters in controversy is taken (given the liberal "notice" and amendment processes under the Federal Rules such a purpose of an administrative agency's charge form is

entirely consistent with prior precedent):

> A charge is a condition precedent to the [NLRB's] power to issue a complaint. Nat. Licorice Company v. NLRB, 309 U.S. 350, 368, 60 S.Ct. 569, 84 L.Ed. 799. However, "The charge is not proof. It merely sets in motion the machinery of an inquiry. When a Board complaint issues, the question is only the truth of its accusations. The charge does not even serve the purpose of a pleading." NLRB v. Indiana & M.Elec. Co., 318 U.S. 9, 18, 63 S.Ct. 394, 400, 87 L.Ed. 579. As said by Judge Sibley speaking for this court in National Labor Relations Board v. Tex-O-Kan Flour Mills, 5 Cir. 122 F.2d 433, 437, "The charges are addressed to the Board and are not cases at all. The case between the Board and the employer begins with the complaint prepared by the Board." NLRB v. Westex Boot & Shoe Co., 190 F.2d 12, 13 (5th Cir. 1951).

The instant case from the Fourth Circuit is much broader than just whether

Mr. Lawson gets his day in Court or not, but, perhaps will affect whether the Fourth Circuit opinion will limit future Plaintiff's rights in ADEA and even other kinds of employment cases to appear in cases where there is a question as to whether an administrative charge was timely filed or the language of the administrative charge was written in explicit enough language. Given this Court's and other court rulings (not to speak of the Legislative History of the ADEA) that may be affected by the ruling of the Fourth Circuit in the instant case, which could be used to oust countless cases from Federal Courts on jurisdictional grounds in the future, the Petitioner respectfully submits that this Court should grant certiorari.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Fourth Circuit.

Respectfully submitted,

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